

**The McLaughlin Company, Petitioner and The
Pioneer Union of Petoskey, Case 7-RM-803**

January 18, 1971

**DECISION, ORDER, AND DIRECTION
OF SECOND ELECTION**

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND BROWN

Pursuant to a Stipulation for Certification Upon Consent Election approved on June 11, 1970, an election by secret ballot was conducted in the above-entitled matter on June 25, 1970, under the direction and supervision of the Regional Director for Region 7, among the employees in the stipulated unit. At the conclusion of the balloting, the parties were furnished with a tally of ballots, which showed that of approximately 101 eligible voters, 99 cast ballots, of which 53 were for The Pioneer Union of Petoskey, 42 for the Intervenor, UAW, 2 were cast against the participating labor organizations, and 2 were challenged. The challenged ballots were not sufficient in number to affect the results of the election. Thereafter, on July 2, 1970, the Intervenor, UAW, filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director investigated the objections and, on September 22, 1970, issued and duly served on the parties his Report and Recommendations on Objections, in which he concluded that Objections to the Employer's conduct numbered 4, 6, and 7 constituted grounds for setting aside the election, and, accordingly, recommended that the election of June 25, 1970, be set aside, and that a second election be directed. Thereafter, the Employer filed timely exceptions to the Regional Director's Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within

the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Pioneer Union of Petoskey and the Intervenor, UAW, are labor organizations claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. We find, in accord with the stipulation of the parties, that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Employer employed at its facility in Petoskey, Michigan; but excluding office clerical employees, technical employees, engineering and professional employees, guards, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's Report, the Employer's exceptions, and the entire record in this case, and hereby adopts the Regional Director's findings, conclusions, and recommendations.¹ In adopting the Regional Director's determination that the Employer's June 22 letter failed to mitigate the coercive effect of the implied threat of plant closure contained in its letter of June 20, we rely not only on those aspects of the June 22 letter cited by the Regional Director² but also on the letter's closing admonition, "Think it over carefully. If you want to avoid the possibility of being out of work or on a picket line, *Do Not Vote For The UAW.*" The distinction there drawn by the Employer between being "out of work" and being "on a picket line" clearly kept alive the earlier threat that the Employer might, on its own initiative, close the plant if the UAW won the election. Accordingly, we find that the impact of the Employer's letters interfered with the free choice of the employees and made a fair election impossible. See *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 618-620. We shall, therefore, set the election aside and direct that a second election be conducted.

ORDER

It is hereby ordered that the election conducted on June 25, 1970, among employees of The McLaughlin Company, at its Petoskey, Michigan, plant, be, and it hereby is, set aside.

¹ See *Plymouth Company*, 182 NLRB No. 1.

² In finding that the Employer's June 22 letter did not mitigate the coercive effect of its June 20 letter, the Regional Director relied on the fact that the later communication listed the names of "UAW plants that have closed or moved away." At the top of this list, in bold letters and underscored, appeared the Employer's name.

[Direction of second election³ omitted from publication.]

CHAIRMAN MILLER, dissenting:

I do not agree with my colleagues that statements in the Employer's letters to its employees a few days before the election carried an implication that a UAW victory would inevitably result in closure or removal of the plant. I would, accordingly, find no proper basis to set aside the election, and, therefore, would certify The Pioneer Union of Petoskey as the exclusive bargaining representative of the Employer's employees.

The letters are written in the tone customarily found in preelection campaigns. The Regional Director set the election aside on the basis of a single reference to strikes and fights attributed to UAW and a reference to the Employer's past relationship with UAW at its Detroit location, which resulted in closure and removal of that operation to the present site in Petoskey. This, despite the Employer's specific indica-

³ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236, *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed

tion to employees that these statements should not be construed as a suggestion that selection of UAW would result in plant closure at Petoskey, and further expression that if UAW is selected "we will sit down at the bargaining table and try to arrive at a contract."

The letters include no specific threat and merely recite facts representing UAW's history as known to the Employer. To imply a threat from them is to preclude an employer from truthfully relating his experiences with a union to employees, which experiences, in an employer's view, are relevant to an informed choice. In my opinion, the Board's role, in policing preelection campaigns, is not to strip preelection statements of the protection afforded by Section 8(c) of the Act simply because they stress the disadvantages of collective bargaining as drawn by an employer from his own experience. I would reverse the Regional Director and allow the first election to stand.

by the Employer with the Regional Director for Region 7 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.